

REMARKS

Claims 1, 2, 4, 5, and 31 – 62 were pending in the Application prior to the outstanding Office Action. In the Listing of Claims above, Applicant has amended claims 1, 4, 5, 31, 45, 50, 54 and 57, canceled claims 32 – 37, 39 – 44, 46 – 49, 51, 52, 56, and 59 – 61, and added claims 62 – 70. Currently pending are claims 1, 2, 4, 5, 31, 38, 45, 50, 53 – 55, 57, 58, and 62 - 70.

In the Office Action, the Examiner rejected claims 1, 2, 4, 5 and 31 – 62 under 35 U.S.C. §102(e). This rejection is addressed below.

I. RESPONSE TO REJECTIONS UNDER 35 U.S.C. §102(e)

In the Office Action, the Examiner rejected claims 1, 2, 4, 5 and 31 – 62 as being unpatentable under 35 U.S.C. §102(e) over U.S. Patent 5,608,786 to Gordon (“Gordon”).

Overview of Gordon

Gordon discloses a messaging system that couples local public switched telephone networks and the Internet. See for example Fig. 1. Gordon utilizes devices referred to as “Unipost Access Nodes” to form a gateway between a phone network and the Internet. See for example Gordon at 4:45 – 67. Gordon discloses that a Unipost Access Node behaves like a conventional voice mail system with respect to the receipt of voice messages to a subscriber. “Thus, to a caller calling a Unipost subscriber from a telephone, the UAN will behave like a voice mail system.” [Gordon at 6:4-5]

Much of Gordon relates to the mechanisms by which subscribers retrieve their own messages remotely. For example, Gordon discusses the “advantages of the system which are particularly appropriate with respect to subscribers who travel and often are quite distant from their particular Unipost Access Node.” [Gordon at 7:18 – 21] See also Gordon at 10:31 – 11:14. As such the subscriber, who is the recipient of the

message, initiates the transfer of voice messages from a remote Unipost Access Node. See for example Gordon at 6:34-57.

Gordon also discloses the use of the Internet to support live communication between a subscriber and a Unipost Access Node: "... voice is transmitted digitally and a live communication is maintained between Toronto UniPost Access Node 6 and Tokyo UniPost Access Node 6." [Gordon at 8:64-67] Live communication over the Internet is based on establishing a "packet path between the originating UniPost Access Node and the destination UniPost Access Node closest to the recipient." [Gordon at 9:13-15] Live communication such as this does not involve encoding a complete user communication prior to transmitting such communication over a network, but involves transmitting voice packets during the user communication along the "packet path." See also Gordon at 7:41-50.

Independent Claim 1 Is Not Anticipated by Gordon

In contrast to the system disclosed in Gordon, embodiments of the present invention involve recording a complete caller communication prior to transmission over a network. After completion of a complete caller communication, the communication is transmitted over a network responsive to a caller indication. These embodiments do not relate to live communication over the Internet, and they do not relate to the transmission of complete voice messages responsive to the recipient of the message.

Claim 1 as amended recites the generation of a digital message file that "comprises a complete caller communication" and the transmission of the digital message file "through said network after said voice encoding device completes the generation of said digital message file." The portions of Gordon that disclose live communication do not anticipate these claim elements. A voice packet is not a complete caller communication, and as described above, Gordon discloses a process by which an ongoing communication is established, not the creation of a complete caller communication followed by a transmission of the communication over a network.

Claim 1 as amended recites that the “transmission of said digital message file is responsive to a caller indication,” and that the reception of the digital message file is “responsive to said caller indication.” The portions of Gordon that relate to subscriber access to voice messages do not anticipate these claim elements. A subscriber in Gordon accesses their voice mailbox when convenient. Thus, these subscriber initiated downloads of voice messages do not involve transmission or reception of messages responsive to a caller indication. For at least these reasons, Claim 1 as amended is not anticipated by Gordon.

Independent Claim 4 Is Not Anticipated by Gordon

Claim 4 as amended recites a digital message file that “comprises a complete caller communication” and transmitting the digital message file over a network “after said step of encoding is completed.” The portions of Gordon that disclose live communication do not anticipate these claim elements. A voice packet is not a complete caller communication, and Gordon discloses a process by which an ongoing communication is established, not the creation of a complete caller communication followed by a transmission of the communication over a network.

Claim 4 as amended recites that the “step of transmitting is responsive to a caller indication,” and receiving “responsive to said caller indication.” The portions of Gordon that relate to subscriber access to voice messages do not anticipate these claim elements. A subscriber in Gordon accesses their voice mailbox when convenient. Thus, these subscriber initiated downloads of voice messages do not involve transmission or reception of messages responsive to a caller indication. For at least these reasons, Claim 4 is not anticipated by Gordon.

Dependent Claims 2, 5, 31, 38, 45, 50, 53 – 55, 57, 58, and 62 – 70 Are Not Anticipated by Gordon

Dependent claims 2, 31, 45, 53, 55, 57, 63, 64, 67 and 68 depend directly and indirectly from claim 1. For at least the reasons stated above with respect to claim 1,

dependent claims 2, 31, 45, 53, 55, 57, 63, 64, 67 and 68 are not anticipated by Gordon.

Dependent claims 5, 38, 50, 54, 58, 62, 65, 66, 69 and 70 depend directly and indirectly from claim 4. For at least the reasons stated above with respect to claim 4, dependent claims 5, 38, 50, 54, 58, 62, 65, 66, 69 and 70 are not anticipated by Gordon.

Respectfully submitted,

Date: November 22, 2008

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